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Burley co-op, growers feuding over \$118 million

JUDGE ORDERS TAXES BE PAID UNTIL DECISION IS MADE

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Nobody likes paying \$30 million in taxes.

But that's what the Burley Tobacco Growers Cooperative has had to do. After the federal tobacco buyout, the co-op ended up with more than 63 million pounds of surplus tobacco.

In the last year, the Lexington-based co-op has sold most of the tobacco for an estimated \$118 million. That money has become embroiled in a lawsuit filed by a group of farmers who contend the co-op should distribute its millions as member profits.

The suit, filed in 2003 in Fayette District Court, is now in Fayette Circuit Court, where Judge Pamela Goodwine ordered the co-op in June to continue paying the estimated taxes.

The plaintiff growers argue that if the money was distributed, the taxes could be avoided and about 200,000 farmers could have split more than \$140 million.

"The problem is, they're paying the taxes and if it's ever distributed, whoever gets it, they'll have to pay taxes on it, too," said James Barton, one of the plaintiffs.

"The thing we're worried about is if it's ever going to come to us, and whether there's going to be any left," Barton said.

Goodwine has frozen the bulk of the co-op's assets. In an attempt to settle the tax issue and possibly preserve some of the money, the court hired a Minneapolis tax expert for advice.

The expert, Sue Ann Nelson of Fredrikson & Byron, informed Judge Goodwine that at this point it is "uncertain whether any court-ordered transfer of such sales proceeds to a fund, account or trust would impact (the co-op's) obligation to report the proceeds as income for estimated tax purposes." Nelson recommended that the co-op pay the taxes and consider requesting a ruling on the matter from the Internal Revenue Service before the end of the taxable year.

Roger Quarles, co-op president, wouldn't comment on which steps the co-op is taking. "I don't know if we've really made that decision one way or the other," he said. "We've got two years" to file an amended return and attempt to get money back.

"Just because we pay the taxes right now is not the end of the story," he said.

Lambert Farmer, one of the plaintiff's attorneys, agreed. "The court did the safe thing," he said. "If, at some point, the ownership goes to the farmers, there will be an amended return and (they'll) try to get that money back. It could come back."

The plaintiffs have argued that growers who sold tobacco to the co-op are owed the eventual profits on the sales of the burley. They originally targeted \$22.8 million in co-op assets but want to expand the suit to include a second class of farmers who they contend have a right to the millions made since the buyout.

The 10-year \$9.6 billion buyout in 2004 ended a federal price support program that set growing quotas and mandatory minimum prices, which guaranteed that farmers would always have a buyer through cooperatives in Kentucky, Tennessee and North Carolina.

The co-op contends the disputed money is a gift that the board of directors can decide how to spend. "The tobacco was

given back to the co-ops more or less as compensation because they are going to have to support the farmers now," said Kevin Henry, an attorney representing the co-op.

"These are important questions that need to be answered so that the board and the members have confidence going forward," Henry said.

Judge Goodwine has scheduled a hearing on the co-op's motion for a partial summary judgment for July 18.

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